In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1000

ELISE McK. MORGAN AND EDWIN MORGAN, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The question is whether petitioners (husband and wife) are entitled to deductions for gifts to charity. Petitioners owned 99% of the voting stock of the Edinburg Corporation and also 99% of the corporation's nonvoting common stock. In December 1958 and January 1959 they transferred all of their nonvoting common stock in the corporation to their two sons as trustees. Under the trust agreement the trustees were to pay any income from the property to a family charitable foundation for 20 years; thereafter the income, and eventually the principal, was payable to petitioners' sons or their heirs.

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Petitioners claimed a charitable deduction for both income and gift tax purposes for the present value of the right to receive the income from the trust property for 20 years. The Commissioner disallowed the claimed deductions. The Tax Court upheld the Commissioner, explaining that the charitable trust's income was wholly dependent upon whether or not the corporation chose to declare any dividends on its nonvoting common stock, and that since that matter was completely within the control of the petitioners (who owned 99% of its voting stock), there was no certainty that the charitable trust would ever receive anything. The Tax Court also concluded that under these circumstances the charity's interest in the stock could not be valued. (Pet. App. 45–55) The Fourth Circuit affirmed *per curiam* (Pet. App. 77).

The holding below is clearly correct. The Treasury Regulations, as well as this Court's opinion in *Commissioner* v. *Sternberger's Estate,* 348 U.S. 187, disallow any charitable deduction where, under the circumstances, it is not certain that charity will ever receive anything. Here petitioners' ownership of 99% of the corporation's voting stock gave them the power to decide whether or not the corporation would pay any dividends during the 20 years that the corporation's nonvoting common stock was being held for the benefit of the charitable foundation. Indeed, as the Tax Court recognized, the Treasury Regula-

tions expressly deny a deduction in this precise situation.[1]

The decision below is correct, and there is no conflicting appellate decision. No further review is warranted.

Respectfully submitted.

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APRIL 1966.

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[1] Treas. Reg. § 1.170–1(e) provides in part:

> * * * The deduction is not allowed in the case of a transfer in trust conveying a present interest in income if by reason of all the conditions and circumstances surrounding the transfer it appears that the charity may not receive the beneficial enjoyment of the interest. For example, assume that assets placed in trust consist of stock in a corporation the fiscal policies of which are controlled by the donor and his family, that the trustees and remaindermen are likewise members of the donor's family, and that the governing instrument contains no adequate guarantee of the requisite income to the charitable organization. Under such circumstances, no deduction will be allowed. * * *

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